

C.) REMARKS:

1. Introduction

Claims 2-11, 13-17, 19, 36-40, 42 and 44 are currently pending in this application. Claims 2, 10 and 36 are independent. Claims, 2, 10, 36 and 39 have been amended. Claims 1, 12, 18, 20-31 and 35 have been previously cancelled without prejudice. Claims 32-34, 43 and 45 have been cancelled herein without prejudice. Applicants reserve the right to pursue one or more of the cancelled claims in a subsequent divisional or continuation application. No new subject matter has been added.

2. Election/Restriction Requirement

In the Office Action, the Examiner has required restriction to pending claims 2-11, 13-17, 19, 36-40, 42 and 44 (claim group I) or to previously submitted claims 32-34. Applicants do not agree with the basis for the restriction requirement given, since the claims are not drawn to a restaurant industry and there is no Office Action dated March 29, 1999, which date is before the filing date of the present application. Nonetheless, in order to advance the prosecution of this application, Applicants elect claim group I and have cancelled claims 32-34 without prejudice. Applicants reserve the right to pursue to the subject matter of the cancelled claims in a continuation or divisional application.

3. Claim Rejections under 35 U.S.C §112

In the Office Action, the Examiner had rejected all pending claims under 35 U.S.C. §112, second paragraph, as being indefinite. Applicants have amended independent claim 2 to recite

that a purchase request is received from each of a plurality of purchasers, in accordance with the remaining independent claims 10 and 36. This recitation, inherent in each of the respective dependent claims as well, confirms that each purchaser sends a purchase request and received purchase requests are grouped into a collective procurement order. Thus, reconsideration and withdrawal of this rejection of the claims is respectfully requested.

The Examiner further rejected claims 14 and 15 as depending on canceled claim 12. Those claims have been amended to depend from pending claim 10. Thus reconsideration and withdrawal of this rejection of claims 14 and 15 is respectfully requested.

4. Claim Rejections Under 35 U.S.C. §102(e)

In the Office Action, the Examiner has rejected pending claims 2-5, 10-11, 19, 36-37, 42 and 44 as anticipated under 35 U.S.C. §102(e) by U.S. Patent No. 6,466,919 in the name of Walker et al. (hereinafter referred to as "Walker"). Applicants' independent claims 2, 10 and 36 have been amended as follows to address this rejection.

Independent claims 2, 10 and 36 have been amended herein to recite, in various forms:

(1) receiving, from at least one seller, a supply commitment for the item, the supply commitment including a plurality of supply prices, each supply price corresponding to a quantity of the item to be included in an order;

(2) grouping said plurality of purchase requests, based on the item and the purchase price, into a collective procurement order;

(3) identifying a final supply price for the collective procurement order based on the ordered quantity of the item in the collective procurement order and the supply commitment; and

(4) fulfilling said collective procurement order with respect to each of said plurality of purchasers, based on each requested purchase price and received supply commitments, at least one of said purchase requests being fulfilled at the final supply price when the final supply price is lower than the purchase price included in a purchase request

These recitations are inherent in each dependent claim due to their ultimate dependency on one of independent claims 2, 10 and 36. Support for these amendments can be found in Applicants' Specification, inter alia, at page 18, line 3 to page 20, line 16. Such recitations are within the scope of the prior claims and thus any search performed by the Examiner should have included considerations of these features in the amended claims. Therefore, no further search is believed to be required based on these amendments. Applicants note that claim 39 has been amended and claims 43 and 45 have been canceled in light of these amendments.

Walker does not fairly teach or suggest recitations (1), (3) and (4) above. In particular, the system disclosed by Walker is devoid of receiving a supply commitment from at least one supplier prior to grouping a collective procurement order as recited in (1). Instead Walker discloses grouping an "aggregate CPO" and then transmitting it to a group of sellers for a commitment or response. (See steps 1405 and 1410 of FIG. 14A of Walker, and Col. 15, lines 26-32).

Walker is further devoid of any teaching of recitations (3) and (4). This is because no supply commitment as recited in these claim recitations are contemplated by Walker as described above.

For the reasons described above, Applicants respectfully request reconsideration and withdrawal of this rejection of claims 2-5, 10-11, 19, 36-37, 42 and 44.

5. Claim Rejections Under 35 U.S.C. §103(a)

In the Office Action, the Examiner has rejected claims 6-9, 13-17 and 38-40 under 35 U.S.C. §103(a) as obvious over Walker in view of U.S. Patent No. 6,269,343 to Pallakoff (hereinafter referred to as "Pallakoff"). Applicants, however, respectfully disagree that Pallakoff or Walker, either alone or in combination, teach or suggest the recitations of the claims as amended.

Walker and Pallakoff are admittedly both buyer-driven commerce systems, but they operate in distinct manners, the features of which are not freely interchangeable. Thus, Applicants object to the combination of these references as asserted by the Examiner. In particular, Pallakoff does not require the submission of buyer-defined prices while Walker does require it. Pallakoff requires receiving a plurality of supply prices for various demand levels while Walker does not. There is also no motivation to be found in the references themselves to combine the particular features of both references as has been done by the Examiner. Such motivation is required by MPEP §2145. In fact, such combinations can only be performed with the impermissible use of hindsight using the teachings found in Applicants' specification.

Even if the Examiner continues to assert the propriety of such combination, there are features of the amended claims that are not taught in either reference, and therefore, can not be suggested by their combination.

As described above in Section 4 of this response, Walker fails to teach or disclose recitations (1), (3) and (4) as found in each independent claim.

In addition to this, Pallakoff fails to teach or suggest recitations (2) and (4). Pallakoff, in fact teaches away from Applicants' recitation of receiving purchase prices from potential purchasers. "A prior art reference that "teaches away" from the claimed invention is a significant factor to be considered in determining obviousness..." (MPEP §2145). Pallakoff instead teaches that fulfillment prices are determined solely by the sellers based on volume of units to be sold, without input by the purchaser. The purchaser is then notified of the supply price based on a demand level of aggregated orders for an item. (See Pallakoff at the Abstract, element 44 of FIG. 4, Col. 1, lines 53-55, Col. 6, lines 6-10, Col. 8, lines 28-32, Col. 11, lines 16-24 and Claims 1-11. See also, element 65 of FIG. 6 of Pallakoff and accompanying description at Col. 7, lines 18-21, that describe a buyer only entering a quantity of an item to be purchased.) Thus, Pallakoff does not anticipate Applicants' amended claims for at least these reasons.

Accordingly, neither Walker nor Pallakoff, alone or in combination, teach claim recitation 4 as amended, and on this basis, this combination of references can not be used to properly reject any of the pending claims.

Based on the above arguments, reconsideration and withdrawal of this rejection under 35 U.S.C. §103(a) of claims 6-9, 13-17 and 38-40 are respectfully requested.

#### 6. Conclusion

This amendment is believed to be responsive to each issue raised in the Office Action dated July 17, 2003. Entry of this amendment is earnestly solicited. Reconsideration and allowance of each of the pending claims is likewise respectfully requested. The Examiner is invited to contact the undersigned at the telephone number provided below if it will advance the prosecution of this application.

Respectfully submitted,

By:



Dated: October 17, 2003

Charles A. Rattner  
Registration No. 40,136  
240 Wardwell Street #7  
Stamford, CT 06902  
(203) 325-8240  
(203) 547-6129 (facsimile)  
crattner@axiomlegal.net